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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA
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11 ROBERT McGUIRE,)
12 Petitioner,) 3:11-cv-00029-HDM-VPC
13 vs.)
14 NEVADA DEPARTMENT OF)
CORRECTIONS DIRECTOR, *et al.*,)
15 Respondents.)
16)
17 _____/

ORDER

18 This is a petition for writ of habeas corpus pursuant to 28
19 U.S.C. § 2254 in which petitioner, a state prisoner, is proceeding *pro*
20 *se*. On November 1, 2010, petitioner filed a petition for writ of
21 habeas corpus in the United States District Court for the District of
22 Wyoming. On January 12, 2011, the case was transferred from the
23 District of Wyoming to the District of Nevada. Upon receiving the
24 case, the court ordered the parties to file a joint status report
25 advising the court of the current status of the case. On March 2,
26 2011, respondents filed a status report stating that the sole matter

1 pending before the court is the petition for writ of habeas corpus.

2 **I. Review of Petition**

3 Rule 4 of the Rules Governing Section 2254 Cases requires the
4 Court to make a preliminary review of each petition for writ of habeas
5 corpus. The court must dismiss a petition "[i]f it plainly appears
6 from the face of the petition . . . that the petitioner is not
7 entitled to relief in the district court." Rule 4 of the Rules
8 Governing 2254 Cases in the United States District Courts; *see also*,
9 *Hendricks v. Vasquez*, 908 F.2d 490 (9th Cir. 1990).

10 A federal court may only grant a petition for writ of habeas
11 corpus if the petitioner can show that "he is in custody in violation
12 of the Constitution" 28 U.S.C. § 2254(a). "According to
13 traditional interpretation, the writ of habeas corpus is limited to
14 attacks upon the legality or duration of confinement." *Crawford v.*
15 *Bell*, 599 F.2d 890, 891 (9th Cir. 1979) (citing *Preiser v. Rodriguez*,
16 411 U.S. 475, 484-86 (1973)).

17 Here, petitioner's allegations, however, do not make such
18 attacks. Petitioner expressly states that he is not challenging his
19 conviction. Instead, petitioner asserts that he seeks to challenge
20 violations of the Western Interstate Corrections Compact arising from
21 the conditions imposed upon him in Nevada's prisons. Petitioner's
22 claims center on the conditions of his confinement at Ely State
23 Prison, not the fact or duration of that confinement. Thus,
24 petitioner's claims are not appropriate for habeas corpus relief.
25 Challenges to the conditions of confinement are more appropriately
26 raised in civil rights action filed pursuant to 42 U.S.C. § 1983.

1 *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991); *Crawford*, 599 F.2d
2 at 891-92.

3 **II. Certificate of Appealability**

4 In order to proceed with an appeal, a petitioner must receive a
5 certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App.
6 P. 22; 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951 (9th
7 Cir. 2006); see also *United States v. Mikels*, 236 F.3d 550, 551-52
8 (9th Cir. 2001). Generally, a petitioner must make "a substantial
9 showing of the denial of a constitutional right" to warrant a
10 certificate of appealability. *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v.*
11 *McDaniel*, 529 U.S. 473, 483-84 (2000). "The petitioner must
12 demonstrate that reasonable jurists would find the district court's
13 assessment of the constitutional claims debatable or wrong." *Id.*
14 (*quoting Slack*, 529 U.S. at 484). In order to meet this threshold
15 inquiry, the petitioner has the burden of demonstrating that the
16 issues are debatable among jurists of reason; that a court could
17 resolve the issues differently; or that the questions are adequate to
18 deserve encouragement to proceed further. *Id.*

19 Pursuant to the December 1, 2009 amendment to Rule 11 of the
20 Rules Governing Section 2254 and 2255 Cases, district courts are
21 required to rule on the certificate of appealability in the order
22 disposing of a proceeding adversely to the petitioner or movant,
23 rather than waiting for a notice of appeal and request for certificate
24 of appealability to be filed. Rule 11(a). This court has considered
25 the issues raised by petitioner, with respect to whether they satisfy
26 the standard for issuance of a certificate of appealability, and


1 determines that none meet that standard. The court will therefore
2 deny petitioner a certificate of appealability.

3 **IT IS THEREFORE ORDERED** that this action is **DISMISSED** with
4 prejudice for failure to state a cognizable habeas corpus claim.

5 **IT IS FURTHER ORDERED** that a certificate of appealability
6 is **DENIED**.

7 **IT IS FURTHER ORDERED** that the Clerk is directed to enter
8 judgment accordingly.

9 Dated this 25th day of April, 2011.

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UNITED STATES DISTRICT JUDGE
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